AUG 5 1983

HOWARD HANSON
MARIN COUNTY CLERK
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DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

DON C. WILSON; RICHARD PARENTO; and URSULA GEALEY,

Plaintiffs,

vs.

GEORGE DEUKMEJIAN, Governor of the State of California; M.A. CHADERJIAN, Secretary of the Youth and Adult Corrections Agency of the State of California; DANIEL McCARTHY, Acting Interim Director of the California Department of Corrections; and REGINALD PULLEY, Warden of San Quentin State Prison,

Defendants.

NO. 103454

TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION.

I. INTRODUCTION

This Tentative Decision and Proposed Statement of Decision is issued following a six-week court trial addressing the constitutionality of the conditions of confinement of the mainline or general population inmates in the California State Prison at San Quentin. At the trial, the parties called dozens of witnesses and submitted hundreds of documentary exhibits. In addition, this Court inspected the facility on two separate occasions (once, on the last day of trial, without prior notice

to Defendants or to the inmates).

This Court is persuaded that Defendants' continued confinement of men at San Quentin under each condition and under the totality of conditions which prevail there is unconstitutional and must be remedied. Confinement at San Quentin is cruel and unusual. The men imprisoned there live under conditions which fall well below basic standards of human decency. Double-celling in extremely small cells remains the rule on the main-line at San Quentin. Violence in the prison is at an unprecedented level and threatens to rage entirely out of control.

Certain facts are readily apparent and undisputed. San Quentin is one of California's oldest prisons, portions of which were constructed over 100 years ago. Inmates share cells of 48 square feet in area and 360 cubic feet of space. The cells lack adequate heat, proper lighting, sufficient ventilation, and hot water. The plumbing is badly deteriorated. The electrical system is in total violation of all relevant codes and has been aptly described as an "electrical nightmare." Fire hazards abound and the provision for fire safety is extremely inadequate. Food is prepared and served under unsanitary conditions by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment. General sanitation, although improved in some respects since this suit was filed in June of 1981, remains deplorable. The physical plant deficiencies and inadequate sanitation practices at San Quentin expose the men confined there to constant, severe and unjustifiable threats to their health and safety.

San Quentin is one of two maximum security prisons

designated custody level IV institutions in which California confines its most violent offenders serving the longest terms. Since the implementation of a revised custody classification system in 1980, virtually all prisoners at San Quentin are level IV custody inmates.

During recent years, as the result of a combination of factors including determinate sentencing laws, mandatory prison terms and longer sentences, the entire California prison system is vastly overcrowded at all levels. At the time of trial, the Department of Corrections was confining more than 32,000 inmates in a system with a designed capacity of less than 24,000. Despite an approved building program which will result in the construction of several new prisons over the next five years, the system is expected to continue to be overcrowded with the net system-wide population increasing by approximately 100 inmates per week. Evidence produced at trial indicated that the Department of Corrections had more than 5800 level IV inmates, whose numbers are increasing at a rate of approximately 1,000 per year, in level IV cells designed for no more than 4300.

There are, to date, no reported California opinions in cases challenging overall conditions of confinement in an institution of the Department of Corrections. The courts of the state have had little opportunity to consider and establish standards for evaluating conditions of prison confinement with respect to whether such conditions are cruel or unusual. (However, state standards are discussed for the first time, to this Court's knowledge, in a new decision filed July 12, 1983, by the Fourth District Court of Appeal, In Re The Inmates of the Riverside

County Jail at Indio v. Ben Clark, as Sheriff of Riverside County, 4 Civ 27464, 83 Daily Journal D.A.R. 2057. This opinion states

> "The same basic test employed in the federal courts is appropriate to assessing conditions of confinement challenged under the California Constitution". (id at 2058)

The Court goes on to say that

> ". . .in assessing the standards of decency which are essential to this analysis, we think it appropriate that California courts look chiefly to California standards and institutions for their guideposts." (id, at p. 2058))

Prior to the Indio opinion California decisions relating to conditions in penal institutions have been limited to a specific practice in a specific institution.. However, there is an abundance of federal decisional authority concerning conditions of confinement in both state and federal prisons. Federal cases have dealt with the standards required under the Eighth Amendment to the United States Constitution which bars "cruel and unusual punishment". The leading federal case in this area of the law is the recent case of Rhodes v. Chapman, 452 U.S. 337 (1981).

California, however, has adopted Article 1, Section 17, of the state constitution which, unlike the Eighth Amendment, bans "cruel or unusual punishment". In construing this provision, this Court bears in mind the California Supreme Court's admonition in Allen v. Superior Court, 18 Cal.3d at 520 (1975). that our constitution is "a document of independent force". Our state Supreme Court has further determined that the use of the disjunctive between the terms "cruel" and "unusual" was purposeful. People v. Anderson, 6 Cal.3d 628 (1972).

This Court has relied heavily upon federal cases in an attempt to rationally and meaningfully evaluate the conditions of confinement at San Quentin prison in terms of their constitutionality. This procedure was approved in the Allen decision cited above.

In its opinion in Rhodes, the United States Supreme Court summarized conditions which had been held to violate the Eighth Amendment. These included unnecessary and wanton infliction of pain, punishment grossly disproportionate to the crime and inflictions of pain which are "totally without penological justification". Other federal cases have held that inmates are entitled to reasonably adequate food, clothing, shelter, sanitation, medical care, ventilation, hot and cold running water, light, heat, plumbing, and quarters which are reasonably fire-safe. Further, the federal courts have held that inmates must be given reasonable protection from constant threat of violence and sexual assault.

In California a punishment is "cruel or unsual, within the meaning of Article 1, Section 17, when it "shocks the conscience and offends fundamental notions of human dignity". In re Lynch, 8 Cal.3d 410 (1972). Further, the California courts have found, as the federal courts have, that the concept of cruel or unusual punishment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society". People v Vaughn, 71 Cal.2d 406 (1969), citing Trop v. Dulles, 356 U.S. 86 (1958).

II. OBSERVATIONS OF COURT

This Court visited San Quentin on two occasions during

the trial. On April 26, 1983, the Court toured the three cell blocks in which general population prisoners were housed at that time, the food preparation,service and storage areas, the hospital, the school, the exercise yards, and the shop areas. On the last day of trial, June 1, 1983, this Court again visited San Quentin, including the two cell blocks in which general population inmates were then housed as well as the dining and kitchen areas visited previously. On the April 26 visit, the Court's first impression upon entering each cell block was that there was an enormous din which was extremely deafening. It was easy to discern where all the noise came from. Almost every inmate has his own television set as well as his own radio. It was not unusual to see two television sets playing along with a radio at one time in a single cell. Each was being played loudly in an apparent attempt to drown out the noise from other nearby sets. The cell blocks are constructed of steel and concrete and reverberate the extreme noise levels generated by the many television sets and radios as well as the voices of staff and inmates.

While the temperature on the lower tiers could be quite comfortable, the temperature on the fourth and fifth tiers was extremely hot. There appeared to be no air circulation. (Most of the men were in their cells as the prison was in a lockdown). Even though the temperature outside and on the lower level was comfortable, the men in the upper levels generally wore only their underwear because of the discomfort from the heat.

In the cells in which there were two inmates, at least one inmate was in his bed. This Court entered several cells and

noted that it was virtually impossible to have more than one person moving about in the approximate 18 inches of space between the bunkbed and the wall. Further, it was quite obvious that the men who were assigned to the upper beds had insufficient headroom to sit up in bed. (The beds are the only furniture in the cells permitted and, therefore, the only place a person can sit to read, to study or to write). Most of the available space in the cells was filled with the inmates' personal property. Many of the cells had boxes stacked from floor to ceiling filled with books, magazines, papers, clothing, radios and other personal property. Many had stools, lamps, fans and other articles of furniture which were termed "contraband" by the prison officials who accompanied the Court on this tour. There was no stool or ladder by which the man assigned to the top bunk could climb up to or down from his bunk. (Several of the inmate witnesses who later testified, testified that the men in the upper bunk had to use the toilet as a footstool to reach the bunk).

The light in the cells was very dim, making it very difficult to read, write or study. Some of the cells had jury-rigged wiring to attach various electrical appliances. There were bare wires apparent in many places. There were electric fans with no guards over the blades. Many of the cell fronts were covered in full or in part by curtains, boxes, clothing and other materials hung there by the inmates in an apparent attempt to acquire privacy.

Many of the men were lying in their beds sleeping or staring into space, and they appeared to the Court to be depressed.

In East and West Block the shower stalls were at one end of each tier. In Alpine the showers were in the center of the tier. Only a few men could take a shower at the same time. One of the most common complaints from the inmates that the Court heard was that they were unable to take a shower frequently enough. Although the administration indicated that the men were permitted to take a shower every other day, they admitted that when the general population was in lockdown it was impossible to allow them to shower that often, for the reason that there was insufficient time to get the men to and from the showers in small groups. Several of the shower rooms were dark as the lights were broken. Some of the showers could not be used as one of the hot water boilers was not functioning.

The cell fronts are open, barred doors. The doors have two separate locking systems. One system is a bar which, when unlocked, can be removed in one stroke for a whole tier. The second locking system consists of individual locks on each cell door. To release a prisoner from a cell the bar must be removed and each cell door individually opened.

The utility alleyways (frequently referred to as "sally ports" or "plumbing chases") in all three of the cell blocks were viewed. A sally port is a narrow (three or four feet wide) alleyway running from one end to the other of each cell block from basement through the fifth tier and each about three-and-a-half feet wide. Each sally port contains heating and ventilating ducts, plumbing for the entire cell block, electrical wiring and television antenna wires. Each sally port was filthy, containing evidence of vermin and roaches; many had leaking pipes, bare

wires; open fuse boxes and other electrical boxes frequently lacked covers.

There were birds flying overhead in the cell blocks.

In the dining area, food was served from open containers unprotected by sneezeguards. The inmates going through the line were permitted to serve themselves. There was no indication that the inmates were expected to come to the meal with clean hands. The plastic eating utensils were placed in such a way that an inmate was likely to touch a number of forks, knives and spoons as he was pulling his own out of the container.

In the main kitchen there was a single sink for washing hands for all of the kitchen workers. There was no running water at that sink that day. The floors were broken and uneven. The walls in the vegetable room were black with mold and gave off a foul odor. There were overhead sewage lines above the work surfaces where food was being prepared. There was standing water outside the freezer in the vegetable room and ice from leaking pipes on the floor of the freezer. The door to the exterior from the vegetable room had an inch or more of space between it and the floor, permitting access to mice, rats and other vermin. There was evidence of mice in this area.

In the main kitchen there was evidence of poor ventilation over the steam cookers, creating problems with condensation and dripping. There was a broken steam line over the tray-washing area which was wrapped with rags but through which, nevertheless, steam was permitted to escape. The floors were extremely wet and slippery. Covers to the sewer lines were missing in many places. Water had backed up and was flooding the basement

under the main kitchen and was being pumped out through the kitchen.

In the bakery area there was a dead rat in a trap; there was evidence of mouse droppings both in the dry food-storage area and in the cooking room. The serving bins in the bakery were dirty. There was a bird in the bakery and there were insects in some of the corn flour. The mixing bowls had evidence of dried food material and one showed evidence of mouse droppings. There was a loose, filthy ventilation system filter hanging from the ceiling in the bakery area.

The shower room provided for the kitchen workers had no lights and was extremely dark.

The garbage containers both in the main kitchen and outside where most were stored had no lids. The wet garbage was dumped into large 55-gallon drums. Empty drums showed evidence of rotting food. Many of the drums appeared to be old, cracked, bent, and filthy, as was the broken concrete area around them.

At the Court's second visit, on June 1, the prison was still in lockdown. This lockdown was even tighter than on the visit six weeks earlier as there had been a new outbreak of violence shortly before the second visit. Most of the same conditions prevailed in the cell block areas as had existed on the first visit. There were even more inmates in their cells at this time. The inmates appeared to be more depressed and sullen. The heat and the lack of ventilation in the top tiers was more evident than on the first visit.

There was some improvement noticed in the food prep-

aration areas. In particular, the empty garbage cans seemed to be free of rotting debris and the bakery seemed to be cleaner than on the Court's first visit. However, all of the rest of the conditions which existed on the first visit seemed to be present on the second tour. In addition, although the hot water was running in the main kitchen washbasin, the basin itself was filthy and there were no towels available. The vegetable slicer was dirty. The sink in the butcher shop was dirty and there were no towels available. There was steam escaping from the tray washer. The steam pipe which the Court noted was broken at her first visit was still broken, wrapped in rags and leaking. There were mouse droppings observed in the bakery storage area. One of the large mixing bowls in the bakery was cracked and broken, but nevertheless still being used. The loose ventilation filter was still hanging from the ceiling. There were still no lights in the kitchen shower room.

III. THE CONDITIONS OF CONFINEMENT OF GENERAL POPULATION PRISONERS AT SAN QUENTIN AMOUNT TO CRUEL AND UNUSUAL PUNISHMENT.

The Court bases its decision concerning this matter on the following facts which were adduced at trial.

A. Double-celling:

1. Two men are confined to a single cell only 48 square feet in floor area and 360 cubic feet of space which contain a double bunkbed, a toilet, and a sink with shelves above the toilet and sink.

2. The bunk beds are approximately 30 inches wide. This leaves only 18 inches between the bed sides and the wall for two

men to move about.

3. There is only 18 square feet of floor space free from furniture and fixtures.

4. The cells are filled with equipment, clothing, and other personal belongings which the inmates have obtained in an attempt to make their daily lives more comfortable. Two men who must share such a cell cannot move about the cell at the same time.

5. The inmate required to take the upper bunk is unable to sit up at any time as the distance between the top of the bunk and the ceiling is only two-and-a-half feet.

6. The weaker of the two inmates in each cell is frequently subjected to threats, harassment and physical abuse (including sexual attack). Fear of retaliation prevents the weaker inmate from complaining to the prison administration.

7. Men are confined in such cells for long periods of time. In 1982 inmates were in "lockdown" (in cells approximately 24 hours a day)for almost half of the year. Thus far in 1983, the general population has been in lockdown since March 27.

8. There is no dayroom area nor any place within the cell blocks for inmates to move about, to exercise or to obtain relief from the close confinement which double-celling compels.

9. Because length of sentence is primary in determining which level a person sentenced to state prison is placed, an increasing number of very young men who have never before been incarcerated have been committed to San Quentin under the new classification system. Many of these young men are physically and emotionally weak and are not able to cope with imprisonment with the more typical Level IV

inmate housed at San Quentin. These men are subject to threats, harassment, intimidation, sexual abuse and physical abuse in much greater numbers than the general population as a whole. Further, these men have a higher rate of suicide than does the general population.

10. There was substantial and convincing evidence that overcrowding and close confinement cause unbearable stress on inmates who are frequently psychologically marginal or brittle. Such inmates are likely to decompensate and suffer mental or emotional breakdowns.

11. These conditions are inhumane. They amount to physical and emotional torture and endanger life. Not one of these results has any penological purpose.

B. Other Conditions of Cell Confinement:

1. The cells have inadequate heat and grossly insufficient ventilation. The temperature differences between lower tiers and upper tiers can be as great as 15 or 20 degrees.

2. There is no hot water in the cells.

3. There is insufficient light in each cell.

4. The plumbing is badly deteriorated.

5. The electrical system in the cell blocks is dangerous and in total violation of all electrical codes.

6. The noise levels are extremely high and excessive.

7. Poor sanitation throughout the cell blocks produces harborage for birds, mice, roaches, bacteria and other vermin.

8. The threat of injury or death from fire is real and imminent. The cell blocks are large: evacuation in the event of fire would take at least 25 minutes. In addition, most

of the cells have jury-rigged and dangerous wiring.

These conditions threaten the physical, mental and emotional health of the men confined on the mainline at San Quentin, who are acknowledged to be the most dangerous in the prison system and seriously maladjusted before they enter the system.

The conditions which exist in the cell blocks do not meet the most minimum standard required for reasonably adequate shelter.

C. Violence:

San Quentin prison has the highest measured rate of violence in theCalifornia prison system. Violent incidents in the last three years have multiplied many times and are disproportionate to the rate of increase in the prison population.

State-wide statistics indicate that the 1982 rate of assaults for the prison system as a whole was 6.24 per 100 of prison population; for Level III prisons the rate was 6.00; for Folsom (the only other Level IV prison in California) 9.56; and for San Quentin 15.44. In 1979 the rates were: statewide, 5.08; Level III, 7.04; Folsom, 4.35; and San Quentin, 5.27. During this three-year period the San Quentin rate almost tripled and the Folsom rate doubled, while the Level III rate decreased. The San Quentin rate is 61 percent greater than that at Folsom and two-and-one-half times greater than that at Level III institutions.

From January 1, 1983, until the start of the trial, April 24, assaults occurred on the mainline at San Quentin on 20 separate occasions, including one murder. During the trial there were

multiple acts of violence (including two murders) virtually weekly. Although under 24-hour surveillance by correctional officers, the men in the San Quentin general population live under daily threat of injury or death. Violence at San Quentin is out of control.

The legislature has decreed harder, longer sentences for those who have committed felonys; however, it did not order that part of each felon's punishment was to live in daily fear of life and limb. Exposure to these dangers has no appropriate penological function. The rate of violence is constitutionally impermissable.

D. Food Service:

1. Food is prepared and served under unsanitary conditions, by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment.

2. The threat of an outbreak of food-borne, water-borne, or vector-borne disease is severe.

3. Opportunities for contamination of the potable water proliferate.

4. There is a lack of proper sanitation which produces harborage for birds, bacteria and other vermin.

The conditions existing in the food service area are a threat to the physical health of the inmates and fall below contemporary standards of decency.

IV. INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE TO REMEDY THE UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT

The Court bases its decision concerning this matter on the fact that unconstitutional conditions have long existed

at San Quentin and are likely to persist and even worsen in the absence of the judicial intervention specified in the Declaratory Judgment and Permanent Injunction.

The evidence produced at trial with regard to the length of time the inhumane, unsanitary and dangerous conditions had existed, were likely to continue to exist and worsen, was overwhelming. Year after, from at least 1977 through 1982, report after report from staff and state-retained consultants of the California Department of Corrections called attention to all of the serious plant deficiencies existing at San Quentin. In addition, the medical staff warned of the effect of double-celling on the health of the inmates. Virtually nothing has been done to correct these deficiencies and absolutely nothing has been done to relieve the pressure of overcrowding on the inmates.

V. ATTORNEY FEES

An award of reasonable attorney fees and costs is appropriate in this case as it involves the vindication of the constitutional rights of the members of Plaintiff Class. The amount of such fees shall be determined at a hearing to be had after entry of judgment.

VI. LEGAL BASIS FOR COURT'S DECISION

The legal basis for the Court's decision is as follows:

1. The Eighth Amendment to the Constitution of the United States provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

2. "No static 'test' can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" Rhodes v. Chapman, 452 U.S. 337, 346 (1981), quoting Trop v. Dulles, 356 U.S. 86, 100 (1958) (plurality opinion). "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." Id., 356 U.S. at 100. As such, this Court is constitutionally bound to apply "broad and idealistic concepts of dignity, civilized standards, humanity and decency," Estelle v. Gamble, 429 U.S. 97, 102 (1976), in its evaluation of the conditions of confinement on the mainline at San Quentin.

3. The Supreme Court has stated:

> Today the Eighth Amendment prohibits punishments which, although not physically barbarous, "involve the unnecessary and wanton infliction of pain," Gregg v. Georgia, 428 U.S. 153, 173 (1976), or are grossly disproportionate to the severity of the crime, Coker v. Georgia, 433 U.S. 584, 592 (1977) (plurality opinion); Weems v. United States, 217 U.S. 349 (1910). Among 'unnecessary and wanton' inflictions of pain are those that are totally without penological justification." Gregg v. Georgia, supra, at 183; Estelle v. Gamble, 429 U.S. 97, 103 (1976). Rhodes v. Chapman, 452 U.S. at 346.

4. The Eighth Amendment prohibition of cruel and unusual punishments applies to the states through the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Robinson v. California, 370 U.S. 660 (1962).

5. Article I, Section 17, of the California Consti-

tution provides: "Cruel or unusual punishments may not be inflicted or excessive fines imposed."

6. A punishment is cruel or unusual within the meaning of Article I, Section 17, when it "'shocks the conscience and offends fundamental notions of human dignity.'" In re Foss, 10 Cal.3d 910, 919 (1974), quoting In re Lynch, 8 Cal.3d 410, 424 (1972). As with the Eighth Amendment, the concept of cruel or unusual punishments "'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" People v. Vaughn, 71 Cal.2d 406, 418 (1969), citing Trop v. Dulles, 356 U.S. 86, 101 (1958).

7. In Allen v. Superior Court, 18 Cal.3d 520, 525 (1976), the Court stated: "It is established that our Constitution is a 'document of independent force (citations) whose construction is left to this court, informed but untrammeled by the United States Supreme Court's reading of parallel federal provisions . . .".

Furthermore, Cal. Const. ARt. I, Section 24, provides in part:

> "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution . . ."

8. The use, by the drafters of the California Constitution, of the disjunctive between the terms "cruel" and "unusual," with knowledge of the federal formulation, was purposeful. People v. Anderson, 6 Cal.3d 628, 634 (1972), cert. denied, 406 U.S. 958 (1972).

9. Calif. Pen. Code Section 2652 makes it a misdemeanor "to use in the prisons any cruel, corporal or unusual

punishment or to inflict any treatment or allow any lack of care which would injure or impair the health of the prisoner, inmate, or person confined. . .."

10. Calif. Pen. Code Section 2600 provides:

> "A person sentenced to imprisonment in a state prison may, during any such period of confinement, be deprived of such rights and only such rights as is necessary in order to provide for the reasonable security of the institution in which he is confined and for the reasonable protection of the public."

11. An analysis of state standards under Article I, Section 17, of the California Constitution is found in a new opinion filed by Division Two of the Fourth Appellate District of the Court of Appeal.

> "The same basic test employed in the federal courts is appropriate to assessing conditions of confinement challenged under the California Constitution . . .
>
> ". . .in assessing the standards of decency which are essential to this analysis, we think it appropriate that California courts look chiefly to California standards and institutions for their guideposts. In Re The Inmates of Riverside County at Indio v. Ben Clark, as Sheriff of Riverside County. (July 12, 1983) 83 Daily Journal D.A.R. 2057, 2058.

* Continued to page 19A

12. In Rhodes v. Chapman, supra, the Supreme Court was concerned with the issue of double-celling. However, in analyzing double-celling the Court considered virtually every aspect of inmate life and institutional design and operation in the Southern Ohio Correctional Facility (SOCF). The Court discussed its previous opinions in Estelle v. Gamble, 429 U.S. 97 (1976), involving inmate medical care, and in Hutto v. Finney, 437 U.S. 678 (1978), involving conditions of confinement in Arkansas' punitive isolation cells, and observed:

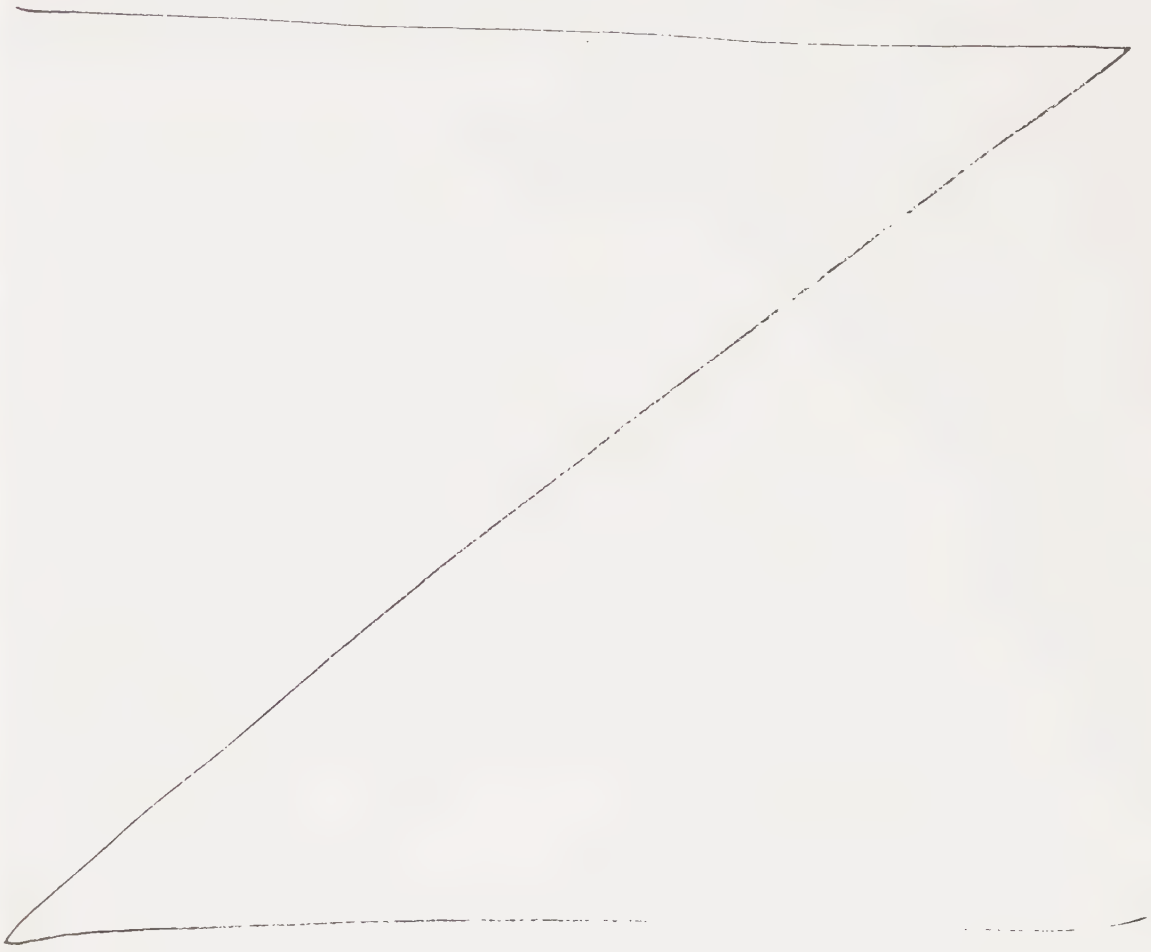
Justice Morris (4th District Court of Appeals, Division 2), in his opinion in the Indio case carefully contrasted the conditions of confinement in the Indio jail to those which existed at the Southern Ohio Correctional Facility which are set out in Rhodes, supra, 452 U.S. and the Metropolitan Correctional Center considered in Bell v Wolfish, supra, 441 U.S.

> "In each of these cases the Supreme Court considered arguments that overcrowded conditions at detention facilities rose to the level of constitutional violations, and in each case the court held that "double-celling" or exceeding a facility's design capacity was not per se constitutionally prohibited. (Citation.) In each case the court directed its attention to the particular conditions at the facility in question.
>
> "TheMetropolitan Correctional Center, at issue in Bell v. Wolfish, was constructed in 1975, and "differ(ed) markedly from the familiar image of a jail; there are no barred cells, dank, colorless corridors, or clanging stell gates. It was intended to include the most advanced and innovative features of modern design of detention facilities. As the Court of Appeals stated: '(I)t represented the architectural embodiment of the best and most progressive penological planning.' (Citation.)
>
> "TheSouthern Ohio Correctional Facility, at issue in Rhodes v. Chapman, was built in the early 1970's; it was describrd as " 'unquestionably a top-flight, first-class ficility.' " (452 U.S. at p. 341.) Both the Bell and Rhodes opinions stressed that under the conditions shown to exist at those facilities, no constitutional violation could be found. By clear implication, the court recognized that under other circumstances, overcrowding would be critical to a finding of unconstitutionality. (Citation.) Conditions of confinement "alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities." (Citation.)"
>
> "The Indio jail facility differs substantially from the "top-flight" and progressive facilities described in the two Supreme Court opinions. ... the jail is a 'very badly outmoded physical plaint, in virtually all of the facilities," in the uncontradicted view of an expert from the Board of Corrections. Breakdown of plumbing

> was common; maintenance suffered. The problems of a badly designed, antiquated physical plant could only be exacerbated by relying on 31 individuals to do the work of 45 staff members." (Id at p 2058)."

In Indio the Riverside County Jail was only twenty two (22) years old at the time of trial. In the present case the facility varies in age from approximately (50)? years to approximately 100 years. No part of the facility has been built since 1950.

Under the circumstances set forth in this court's Statement of Decision; supra, This Court finds that the conditions of confinement at San Quentin fail to meet contemporary standards of decency, and are unconstitutional.



> "Conditions other than those in Gamble and Hutto, alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual . . . ." 452 U.S. at 347 (emphasis supplied).

Most courts adopt Justice Brennan's assessment of the majority opinion in Rhodes, see 452 U.S. at 362-63 and n. 10 (Brennan, J. concurring in the judgment), and refer to the analysis as one respecting the "totality of conditions" of confinement. Ruiz v. Estelle, 679 F.2d 1115, 1139 (5th Cir. 1982). The "totality of conditions" approach adopted by the Supreme Court and by these lower federal courts is an appropriate analytical framework for this Court's consideration of the constitutionality of conditions on the mainline at San Quentin under both the state and federal constitutions.

One court eschews the label "totality of conditions," cautioning against vagueness in findings of cruel and unusual punishments and in creation of remedies for such constitutional violations; That court precribes a focus on "discrete areas of human needs." Hoptowit v. Ray, 682 F.2d 1237, 1246-47 (9th Dir. 1981); see also, Wright v. Rushen, 642 F.2d 1129 (9th Cir. 1981). That same court also recognizes that

> ". . .each condition of confinement does not exist in isolation; the court must consider the effect of each condition in the context of the prison environment, especially when the ill-effects of particular conditions are exacerbated by other related conditions." Wright v. Rushen, supra, 642 F.2d at 1133.

The Court's judgment in the present case reflects these cautionary statements by the Federal Ninth Circuit Court of Appeal.

13. Generally speaking, inmates are entitled under the

Eighth Amendment to "reasonably adequate food, clothing, shelter sanitation, medical care, and personal safety." Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977) 438 U.S. 781 (1978), cert. denied, 438 U.S. 915 (1978); Wright v. Rushen, 642 F.2d 1129, 1132-33 (9th Cir. 1981).

14. With respect to reasonably adequate shelter, Rhodes v. Chapman, supra, sets forth by its factual presentation the standard by which the constitutionality of double-celling under the Eighth Amendment may be determined. It does not confer a federal constitutional blessing on double-celling in all circumstances. The Court declared that "conditions in a number of prisons, especially older ones, have justly been described as "deplorable" or "sordid." 452 U.S. at 352. The courts, including this Court, "have a responsibility to scrutinize claims of cruel and unusual confinement." Id. On this basis, it is appropriate to compare the conditions at the institution under scrutiny in Rhodes v. Chapman with conditions found in other prisons such as San Quentin.

One Federal District Court aptly observed:

> "As important as what the Supreme Court decided in Rhodes is what it did not decide. The Court did not rule that double-celling may never amount to cruel and unusual punishment. Rather, the extensive analysis of related prison conditions makes it crystal clear that each case must be judged on its own unique facts." Grubbs v. Bradley, 552 F.Supp. 1052, 1122 (M.D. Tenn. 1982).

Accordingly, since Rhodes, several courts including the Grubbs court, have determined that double-celling may violate or in fact does violate the Eighth Amendment. Madyun v. Thompson, 657 F.2d 868 (7th Cir. 1981); Gates v. Collier, 525 F.Supp.

435 (N.D. Ind. 1981); French v. Owens, [illegible] (S.D. Ind. 1982); Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982); see also, Toussaint v. Rushen, #C-73-1422 SAW (N.D. Cal.) (preliminary injunction issued Jan. 14, 1983, enjoining, inter alia, double-celling in the restricted housing units at San Quentin.

15. "Sanitation is a discrete core area entitled to independent Eighth Amendment protection." Grubbs v. Bradley, supra, at 1127. Inmates are entitled to "reasonably adequate ventilation, sanitation, bedding, hygenic materials and utilities (i.e., hot and cold water, light, heat, plumbing)." Ramos v. Lamm, 639 F2d 559, at 568 (10th Cir. 1980). Their quarters must be reasonably fire-safe. Leeds v. Watson, 630 F.2d 674, 675-76 (9th Cir. 1980); Ruiz v. Estelle, 503 F.Supp. 1265, 1383 (S.D. Tex. 1980).

16. "Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . .proscribed by the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Mental Health care falls within the ambit of serious medical needs. See, e.g., Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981), and Bowring v. Goodwin, 551 F.2d 44 (4th Cir. 1977).

17. Inmates must be given reasonable "protection from the constant threat of violence . . .and sexual assault." Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981), cert dismissed sub nom. Ledbetter v. Jones, 453 U.S. 959 (1981); see also, Ramos v. Lamm, supra, 639 F.2d at 572. ". . .Confinement in a prison where violence and terror reign is actionable. A prisoner

has aright, secured by the Eighth and Fourteenth Amendments, to be reasonably protected from the constant threat of violence and sexual assault by his fellow inmates, and he need not wait until he is actually assaulted to obtain relief." Woodhous v. Virginia, 487 F.2d 889, 890 (4th Cir. 1973), citing Holt v. Sarver, 442 F.2d 304, 308 (8th Cir. 1971). Furthermore, "[a] pervasive risk of harm . . . may be established by much less than proof of a reign of violence and terror in the particular institution." Doe v. District of Columbia, 701 F.2d 948, 961 (D.C. Cir. 1983).

"When a state confines a person by reason of conviction of a crime, the state must assume the obligation for the safe-keeping of that prisoner. The means of protecting inmates from each other is the provision of adequate physical facilities. Long-range plans provide no satisfactory solution to those who are assaulted or physically harmed today." Finney v. Arkansas Board of Corrections, 505 F.2d 194, 201 (8th Cir. 1974), on remand, Finney v. Hutto, 410 F. Supp. 251 (N.D. Ark. 1976).

18. ". . .[W]hile an inmate does not have a federal constitutional right to rehabilitation, he is entitled to be confined in an environment which does not result in his degeneration or which threatens his mental and physical well-being. Battle v. Anderson, 564 F.2d 388, 403 (10th Cir. 1977).

19. An Eighth Amendment violation is proven when "the cumulative impact of the conditions of incarceration threatens the physical, mental and emotional health and well-being . . . the inmates and/or creates a probability of recidivism and future incarceration." Laaman v. Helgemoe, 437 F.Supp. 269, 323 (D.N.H.

1977), quoted in Rhodes v. Chapman, supra, at 361.

20. ". . .[J]udicial intervention is indispensable if constitutional dictates -- not to mention considerations of basic humanity -- are to be observed in the prisons." Rhodes v. Chapman, supra at 354 (Brennan, J., concurring in the judgment) (emphasis in the original). ". . .[C]ontrol of jails and prisons is best left to the experts who are charged with the responsibility of running them, except when the conditions do not comport with concepts of human dignity or constitutional principles." Inmates of Sybil Brand Institute for Women v. County of Los Angeles, 130 Cal. App.3d 89, 101 (1982). ". . .[W]hen a prison has been found to be operated in plain violation of law, the court has the power, and it is its duty, to order appropriate remedial action." French v. Owens, supra, at 926. When conditions of confinement amount to cruel and unusual punishment, "federal courts will discharge their duty to protect constitutional rights." Rhodes v. Chapman, supra, at 352. This Court will do no less.

21. The courts in this state are vested with wide discretion in formulating equitable remedies to cure constitutional violations. Hutto v. Finney, 437 U.S. 678, 687, n.9 (1978); Molar v. Gates, 98 Cal.App.3d 1, 25 (1979); Blair v. Pitchess, 5 Cal.3d 258 (1971); Central Valley Chapter of the Seventh Step Foundation, Inc. v. Younger, 95 Cal.App.3d 212 (1979).

22. The Court need not find that Defendants have acted maliciously or in bad faith before it can declare conditions at San Quentin unconstitutional or fashion its remedy. See,

Rhodes v. Chapman, supra, at 353 (Brennan, J., concurring in the judgment). Furthermore, Defendants' statutory duty to incarcerate prisoners legally committed to them does not shield them from injunctive relief to cure unconstitutional conditions of confinement. See, e.g., Startrack, Inc. v. County of Los Angeles, 65 Cal.App.3d 451, 457 (1976); Merandette v. City and County of San Francisco, 88 Cal. App.3d 105, 110-111 (1979). "Legislative mandate cannot take precedence over constitutional provisions." Molar v. Gates, supra, 98 Cal.App.3d at 24.

23. The Court recognizes and does not dispute the prerogative of the California legislature in the first instance to define conduct as criminal, to establish criminal penalties, or to appropriate funds to the various agencies of the Executive Branch as it sees fit or proper. However, the prerogatives of the Legislative Branch are circumscribed and limited by both the Federal Bill of Rights and the California Constitution. Methodist Hospital of Sacramento v. Saylor, 5 Cal.3d 685 (1971); Way v. Superior Court, 74 Cal.App.3d 165 (1977). It is this Court's duty to enforce these constitutional limitations whenever the exercise of legislative prerogative results in a deprivation of constitutional rights.

24. While reduction of population and elimination of double-celling as a remedy for overcrowding at penal institutions may well cause logistical difficulties for prison officials in the operation of prison systems, it is nevertheless a remedy that may be ordered in an appropriate case. Battle v. Anderson, 564 F.2d 388, 403 (10th Cir. 1977). Furthermore, while remedies

ordered by a court may be costly to accomplish,

> Constitutional rights are not . . . confined to those available at moderate cost . . . [T]he nature of the safeguards imposed by the Bill of Rights and the Fourteenth Amendment levy costs impossible for an accountant to calculate, but esteemed by us because they are literally priceless.

25. "[T]he reduction of population at one institution must not be accomplished in such a way that another facility becomes unconstitutionally overcrowded." Grubbs v. Bradley, supra, 552 F.Supp. at 1131.

26. The Court may appoint a Special Master to oversee enforcement of its judgment. The powers of the Special Master are to be dictated and delegated by the Court, and authority for his or her appointment may be derived from C.C.P. Section 564, pertaining to receivers: "In Superior Court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases: . . .3. After judgment, to carry the judgment into effect . . . [And] 8. Where receivers have heretofore been appointed by the usage of courts of equity." Special Masters, who are sometimes designated as "receivers," have been appointed to enforce equitable decrees in prison condition cases. Ruiz v. Estelle, 679 F.2d 1115, 1161 (5th Cir. 1982).

27. C.C.P. Section 1021.5. The "private attorney general theory . . ."seeks to encourage suits effectuating a strong congressional or national policy by awarding substantial attorneys' fees, regardless of defendants' conduct, to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens." Serrano v. Priest, 20 Cal.3d

25, 43 (1977), quoting D'Amico v. Board of Medical Examiners, 11 Cal.3d 1, 27 (1974). This case, involving vindication of the constitutional rights of members of the plaintiff class, is an appropriate case for an award of reasonable attorneys fees to Plaintiffs. See, e.g., Inmates of Sybil Brand Institute for Women v. County of Los Angeles, 130 Cal.App.3d at 111-114 (reasonable fee award in case involving several conditions of confinement in women's county jail facility housing pretrial detainees and sentenced prisoners).

28. Actions pursuant to 42 U.S.C. Section 1983 may be brough in CaliforniaState Courts. Brown v. Pitchess, 13 Cal. 3d 518 (1975). 42 U.S.C. Section 1988 provides in part: "In any action or proceeding to enforce a provision of Section [ ] . . .1983 . . .of this title . . ., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." This provision is a federal parallel to C.C.P. Section 1021.5, and under Section 1988 reasonable attorney's fees to prevailing plaintiffs in prison conditions litigation have been made in many cases, including the following: Ruiz v. Estelle, 553 F.Supp. 567 (S.D. Tex. 1982); Stewart v. Rhodes, 650 F.2d 1216 (6th Cir. 1981), cert denied, 455 U.S. 991 (1982).

Any objections to this Proposed Statement of Decision and/or to the proposed judgment shall be filed no later than ten (10) days from today. Hearing on the objections is set for 10:00 A.M. September 1, 1983.

DATED: August 5, 1983.

[illegible] SMITH
Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

DON C. WILSON; RICHARD PARENTO; and URSULA GEALEY,

Plaintiffs,

vs.

GEORGE DEUKMEJIAN, Governor of the State of California; N.A. CHADERJIAN, Secretary of the Youth and Adult Corrections Agency of the State of California; DANIEL McCARTHY, Acting Interim Director of the California Department of Corrections; and REGINALD PULLEY, Warden of San Quentin State Prison,

Defendants.

No. 103454

PROPOSED DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

This cause came on regularly for trial in Department No. 2, Courtroom No. 1, Marin County Civic Center, before the Honorable Beverly B. Savitt, Judge of the Superior Court. Trial began on April 21, 1983, and continued thereafter from day to day through June 1, 1983. Michael Satris, Luther Kent Orton, David D. Cooke and Kathleen Foster appeared as counsel for plaintiffs Don C. Wilson, Richard Parento, Ursula Gealey and the class of persons represented by plaintiffs Wilson and Parento, consisting of all persons who have been confined on the mainline

at San Quentin since June 16, 1981, or who may be confined there in the future (the "Mainline Class"). James B. Cuneo appeared as counsel for defendants George Deukmejian, N.A. Chaderjian, Daniel McCarthy and Reginald Pulley. Oral and documentary evidence was presented and has been considered by the Court. Each party lodged a proposed form of judgment and proposed statement of decision which have been reviewed and considered by the Court. The cause was submitted on July 8, 1983.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the men comprising the mainline population in the California State Prison at San Quentin since the filing of the Complaint herein on June 16, 1981, have been and are now confined there under conditions which violate Section 17 of Article 1 of the California Constitution, Sections 2600 and 2652 of the California Penal Code, and the Eighth and Fourteenth Amendments of the United States Constitution. The men comprising the mainline population at San Quentin Prison suffer cruel and unusual punishment and are denied due process of law in the following respects:

(i) The prison is overcrowded. The men are forced to remain confined for extended periods of time, two men to a single cell less than 48 square feet in floor space and 360 cubic feet of space, with little or no opportunity for meaningful activity. Most of the men confined there are dangerous; many are seriously maladjusted or have psychiatric problems. The cells have inadequate heat, improper light and insufficient ventilation. Almost no cells have hot water. The plumbing is badly deteriorated. The electrical system in the cell blocks is dangerously substandard, in total violation of all electrical

codes. Noise levels are excessive. Lack of proper sanitation practices produces harborage for birds, mice, roaches, bacteria and vermin of all sorts. The threat of injury or death from fire is real and imminent. These conditions threaten the physical, mental and emotional health and well-being of the men confined on the mainline at San Quentin and are not penalogically justified.

(ii) The men are forced to live amidst excessive violence; the threat of injury or death from violent assault is great and is punishment not included in the punishment to which each inmate is sentenced.

(iii) The men are forced to live in a prison in which the threat of an outbreak of food-borne, water-borne, or vector-borne disease is severe. Food is prepared and served under unsanitary conditions, by inadequately trained and improperly supervised food service workers, using outmoded and unsafe equipment. Lack of proper sanitation practices produces harborage for birds, mice, roaches, bacteria and vermin of all sorts. Opportunities for contamination of the potable water supply proliferate. The sanitary conditions existing are below minimum acceptable standards of decency.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT the above-named defendants, and each of them, and their officers, agents, employees, representatives, and all persons acting in concert or participating with them, shall be and they hereby are enjoined and restrained from causing or permitting any person to be confined on the mainline at San Quentin unless and until each of the unconstitutional conditions of confinement described

above is eliminated or corrected.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the foregoing order enjoining and restraining defendants from the continued confinement of men on the mainline at San Quentin shall be stayed, but only if and so long as defendants remain in compliance with each of the following conditions calculated to result in the expeditious elimination, amelioration and correction of each unconstitutional aspect of confinement on the mainline at San Quentin:

(i) Defendants shall act immediately to reduce overcrowding at San Quentin. Within forty-five (45) days of the issuance of this order, defendants shall submit to the Court a plan to be implemented within ninety (90) days thereafter for the prompt elimination of overcrowding at San Quentin, which plan shall include the elimination of all involuntary double-celling at San Quentin and shall address the effect on the physical, mental and emotional well-being of members of the Mainline Class resulting from their confinement in institutions other than San Quentin.

(ii) Within forty-five (45) days of the issuance of this order, defendants shall submit to the Court a plan for the evaluation and re-examination of the departmental classification system by which San Quentin has been designated a Level IV institution. The evaluation and re-examination shall be submitted to the Court within ninety (90) days of the completion of the plan and shall address, inter alia:

(a) the modification of the classification system in light of the extent to which the system has contributed to the

unprecedented and unacceptable levels of violence at Level IV institutions, in general, and at San Quentin, in particular;

(b) the designation of one or more Level III institutions as Level IV institutions to minimize overcrowding and eliminate involuntary double-celling of Level IV inmates;

(c) the modification of the classification system to prevent the commitment to Level IV institutions of men whose youth or other personal characteristics render confinement at a Level IV institution unsafe, inappropriate, or not necessary for the protection of the public and the proper functioning of the Department of Corrections.

(iii) Within forty-five (45)days of the issuance of this order, defendants shall submit to the Court a proposal for the development of a plan and schedule for the expeditious elimination of the structrual and operational deficiencies at San Quentin which threaten the lives, health and safety of the inmates confined there and which are more fully described in the Statement of Decision herein. The plan and schedule to be developed shall be submitted to the Court within ninety (90) days after the completion of the proposal and shall address each of the following:

(a) The correction of physical plant, equipment and operational deficiences in the food preparation and food service area which threaten health and safety.

(b) The correction or amelioration of conditions throughout the institution, especially in the cell-block areas, which create a risk of death or injury by fire or electrical shock;

(c) The provision of safe and sufficient heat, light, plumbing, electricity, ventilation and hot and cold running water to all mainline cells as well as the control of noise in the cell block areas; and

(d) The more effective control of birds, mice, roaches, bacteria and other vermin throughout the institution, especially in the food preparation, food service and cell block areas.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall review the adequacy of each plan or proposal submitted with the assistance of a Special Master to be appointed by the Court within thirty (30) days of the date hereof from the candidates to be nominated by the parties in writing within fifteen (15) days of the date hereof. Reasonable compensation for the Special Master shall be paid by defendants. The Special Master shall consult with the Court upor request and shall submit a written report each calendar quarter until further order of the Court concerning the adequacy of defendants' implementation of each plan or proposal. Plaintiffs' counsel shall be provided with a copy of each plan, proposal and Special Master's report and will be afforded an opportunity to comment on them. The order enjoining and restraining defendants from continued confinement of men on the mainline at San Quentin shall be stayed only if and so long as the Court remains satisfied with the adequacy of defendants' plans and proposals and the implementation thereof.

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IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs recover their reasonable attorneys' fees and costs of suit herein according to proof to be submitted.

DATED: August _____, 1983.

HON. BEVERLY B. SAVITT
JUDGE OF THE SUPERIOR COURT

California. Superior Court (Marin County).